

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:	Cotrel <i>et al.</i>	Issued on:	Sep. 3, 2002
Patent No.:	6,444,673 B1	Confirmation No.:	5367
Application No.:	09/722,438	Art Unit:	1624
Filed:	Nov. 28, 2000	Examiner:	BERCH, Mark L.
For:	OPTICALLY ACTIVE 5H-PYRROLO [3,4-B] PYRAZINE DERIVATIVE, ITS PREPARATION AND PHARMACEUTICAL COMPOSITIONS CONTAINING IT	Attorney Docket No:	0701.224G

TERMINAL DISCLAIMER

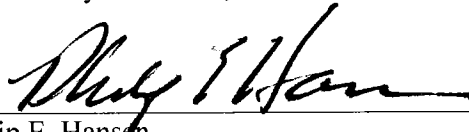
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The fee for processing the attached Terminal Disclaimer is believed to be \$140.00.
Please charge the required fee and any other fees necessary to accomplish the filing of the
disclaimer to Customer No. 23405.

Respectfully submitted,

Date: Nov 23, 2011

By: 

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**TERMINAL DISCLAIMER OF A PATENT GRANTED,
UNDER 35 U.S.C. § 253 AND 37 C.F.R. § 1.321(a)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 3.73(b), Sunovion Pharmaceuticals Inc. states that it is the assignee of the entire right, title and interest in and to the above identified patent by virtue of:

1. An assignment from Claude Cotrel and Gérard Roussel to Sepracor Inc. This document was recorded in the United States Patent and Trademark Office on March 4, 2009 at Reel/Frame 022343/0048.
2. A change of name assignment from Sepracor Inc. to Sunovion Pharmaceuticals Inc. This document was recorded in the United States Patent and Trademark Office on December 9, 2010 at Reel/Frame 025484/0050.

Sunovion Pharmaceuticals Inc. is the assignee of the entire right, title, and interest in and to U.S. Patent No. 6,436,936 by virtue of:

1. An assignment of U.S. Application No. 07/984,039 (the grandparent application of U.S. Application No. 09/121,029, which issued as U.S. Patent No. 6,436,936) from James W. Young and Steven Brandt to Sepracor Inc. This document was

recorded in the United States Patent and Trademark Office on January 21, 1993 at Reel/Frame 6447/0179.

2. A change of name assignment from Sepracor Inc. to Sunovion Pharmaceuticals Inc. This document was recorded in the United States Patent and Trademark Office on November 10, 2011 at Reel/Frame 027204/0395.

The owner, Sunovion Pharmaceuticals Inc., of one hundred percent interest in the instant patent, hereby disclaims, except as provided below, the terminal part of the statutory term as defined in 35 U.S.C. § 154 of the instant patent, such that the terminal part of the captioned patent does not run beyond the expiration date of the full statutory term of United States Patent No. 6,436,936 ("reference patent") as the term of said reference patent is defined in 35 U.S.C. § 154, and as the term of said reference patent may be shortened by any terminal disclaimer. This terminal disclaimer is without prejudice to the patent-term extension of seven hundred sixty (760) days that has already been granted. *See Merck & Co. v. Hi-Tech Pharmacal Co.*, 482 F.3d 1317, 1324 (Fed. Cir. 2007). The owner hereby agrees that the instant patent shall be enforceable only for and during such period that the instant patent and the reference patent are commonly owned. This agreement is binding upon the owner, its successors, or assigns.

In making the above disclaimer, the owner does not herein disclaim the terminal part of the term of the instant patent that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. § 154 of the reference patent in the event that said reference patent (or any patent over which said reference patent is terminally disclaimed) later expires or has expired for failure to pay a maintenance fee; is held unenforceable; is found invalid by a court of competent jurisdiction; is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. § 1.321; has claims canceled by a reexamination certificate; is reissued; or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

The instant terminal disclaimer is solely for the purpose of obviating any allegation of non-statutory double patenting with respect to the reference patent. In making the above disclaimer, the owner does not admit, acquiesce, or concede that any claim of the instant patent is invalid, that the reference patent or its corresponding application involves double patenting with respect to the instant patent, or that an allegation of double patenting is legally or factually supportable with respect to the instant patent. In making the above disclaimer, the owner does

not admit that the statutory term of the reference patent would run beyond that of the instant patent in the absence of the terminal disclaimer. The owner understands the statutory expiration date of the reference patent presently to be December 2, 2011, and the statutory expiration date of the instant patent presently to be January 16, 2012. The above disclaimer does not raise a presumption or estoppel on the merits with respect to any double patenting allegation based on the reference patent.

The terminal disclaimer fee under 37 C.F.R. § 1.20(d) is included.

For this submission on behalf of Sunovion Pharmaceuticals Inc., the undersigned is empowered to act on behalf of Sunovion Pharmaceuticals Inc.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and that like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the instant patent.

Signed this 22 day of November, 2011.

Sunovion Pharmaceuticals Inc.

By: 

Name: Mark Iwicki

Position: President & Chief Executive Officer

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